



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-1011]

RIN 1625-AA00

Safety Zone; Great Egg Harbor Bay, Marmora, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Great Egg Harbor Bay in Marmora, NJ. The safety zone includes all waters within 500 yards of a blasting vessel and equipment being used to conduct bridge pile blasting operations, which is the final phase of the demolition of the Route 9, Beesley Point Bridge bascule span. This safety zone will only be enforced during times of explosive detonation. The safety zone will temporarily restrict vessel traffic from transiting or anchoring in a portion of the Great Egg Harbor Bay while pile blasting and removal operations are being conducted to facilitate the removal of bridge piles from the demolished Route 9, Beesley Point Bridge.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 24, 2016. For the purposes of enforcement, actual notice will be used from November 15, 2016, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. During this period the safety zone will only be enforced during times of explosive detonation.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-1011 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Marine Science Technician First Class Tom Simkins, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215)271-4889, e-mail Tom.J.Simkins@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |
| COTP | Captain of the Port |

II. Background Information and Regulatory History

In June 2013, demolition work began on the Route 9, Beesley Point Bridge between Somers Point and Marmora, NJ. Route 52 Construction, the company performing this demolition work, has completed all demolition of the bridge and piles except the portion of the bridge which has the bascule span opening for the navigational channel. The removal of the remaining piles, which are secured to the sea floor bed, will be completed by using explosives after which the piles and debris will be removed. The Captain of the Port has determined that potential hazards associated with pile blasting operations, beginning on or about November 15, 2016, will be a safety concern for anyone operating within 500 yards of pile blasting operations during times of explosive detonation.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for this event were not received by the Coast Guard until November 8, 2016, and the safety zone is needed for blasting and demolition operations which will begin November 15, 2016. It is impracticable to publish an NPRM and consider comments due to the short window of time until the operation begins. Allowing this event to go forward without a safety zone in place would expose mariners and the public to unnecessary dangers associated with explosive detonation.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** for the reasons we stated above. Delaying the effective date of this rule would be contrary to public interest because the safety zone is needed to begin on November 15, 2016, to protect the public from safety hazards associated with explosive detonation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port has determined that potential hazards are associated with demolition and pile blasting operations of the Route 9, Beesley Point Bridge, over the Great Egg Harbor Bay, in Marmora, NJ, from November 15, 2016, through November 24, 2016. The rule will provide a safety buffer around the blasting vessel during times of explosive detonation.

The purpose of this rule is to promote maritime safety and protect vessels from the hazards of bridge demolition and pile blasting operations, and to maintain safety of navigation in the Great Egg Harbor Bay, in the vicinity of the Route 9, Beesley Point Bridge. The rule will provide a safety buffer around the crane and barge while demolition operations are conducted, and will provide a safety buffer around the blasting vessel during times of explosive detonation.

IV. Discussion of the Rule

On November 15, 2016, demolition work will begin on the remaining portion of the Route 9, Beesley Point Bridge, over the Great Egg Harbor Bay, in Marmora, NJ. The Captain of the Port has determined that the hazards associated with demolition and pile blasting operations requires a safety zone.

The safety zone will be enforced starting on or after November 15, 2016, only during times of explosive detonation, and encompasses all navigable waters in the Great Egg Harbor Bay within 500 yards of vessels and machinery being used to conduct pile blasting and removal operations. The duration of the enforcement of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while explosive detonation occurs. There will be two blasting events occurring on consecutive days to complete both piers. Actual dates and times of explosive detonation will be published with a combination of broadcast notice to mariners, local notice to mariners, posted warning signs, 500 yard marine traffic safety zone maintained by the contractors safety boats, a 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. The schedule of the signals will be posted along with warning signs. The contractor will verify that all vessels and

persons are clear of safety zone 10 minutes prior to the scheduled shot time and will remain secured until the blaster gives the “All Clear” that the channel is clear for vessels to transit.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port or his designated representative. No vessels may transit through the safety zone during times of explosive detonation. During pile blasting explosive detonation, vessels will be required to maintain a 500 yard distance from vessels and equipment used to conduct pile blasting and removal operations. This 500 yard radius will be secured by two contractor safety boats in the adjacent waterways.

V. Regulatory Analysis

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This finding is based on the limited size of the zone and that vessels will only be affected during times of explosive detonation. In addition, the zone will be well publicized to allow mariners to make alternative plans for transiting the affected area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

It is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas. In addition, vessels may transit the navigation channel, except during time of explosive detonation.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule

elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing all navigable waters in the Great Egg Harbor Bay within 500 yards of vessels and machinery being used to conduct pile blasting and removal operations during times of explosive detonation. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as

follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05-1011, to read as follows:

§ 165.T05-1011 Safety Zone; Great Egg Harbor Bay, Marmora, NJ

(a) Regulated areas. The following area is a safety zone: All waters within 500 yards of the blasting vessel and equipment conducting pile blasting operations, in Great Egg Harbor Bay, in the vicinity of Route 9, Beesley Point Bridge, in Marmora, NJ.

(b) Regulations. The general safety zone regulations in § 165.23 apply to the safety zones created by this temporary section, § 165.T05-1011.

(1) All vessels and persons are prohibited from entering into or moving within the safety zone described in paragraph (a) of this section while they are subject to enforcement, unless authorized by the Captain of the Port or by his designated representative.

(2) Persons or vessels seeking to enter or pass through the safety zone must contact the Captain of the Port or his designated representative to seek permission to transit the area. The Captain of the Port, Delaware Bay can be contacted at telephone number 215-271-4807 or on Marine Band Radio VHF Channel 16 (156.8 MHz).

(3) No vessels may transit through the safety zone described in paragraph (a) of this section during times of explosives detonation. During pile blasting detonation, vessels will be required to maintain a 500 yard distance from the blasting vessel and equipment. Actual dates and times of explosive detonation will be announced with a combination of broadcast notice to mariners, local notice to mariners, posted warning signs, 500 yard marine traffic safety zone

maintained by the contractors safety boats, 10 minute, 5 minutes, and 1 minute warning made by the blasting vessel via VHF-FM channel 16, and warning signals at 5 minutes with 3 short blasts of the air horn, and 1 minute warning of 2 short blasts of the air horn. The schedule of the signals will be posted along with all other required signage.

(4) This section applies to all vessels except those engaged in the following operations: enforcing laws, servicing aids to navigation, and emergency response vessels.

(c) Definitions. As used in this section:

Captain of the Port means Captain of the Port Delaware Bay. The Captain of the Port is also the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA. Captain of the Port Delaware Bay means the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) Enforcement periods. This section will be effective from November 15, 2016, through November 24, 2016. During this period the safety zone will only be enforced during times of explosive detonation.

Dated: November 15, 2016.

Benjamin A. Cooper,
Captain, U.S. Coast Guard,
Captain of the Port, Delaware Bay.

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